

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9138 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESH HIRABHAI GAJERA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

#. Commissioner of Police, Rajkot City, Rajkot, passed an order dated June 28, 1999, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner Shailesh Hirabhai Gajera. Being aggrieved by the said order of detention, the petitioner approached

this Court with this petition under Article 226 of the Constitution of India.

#. The grounds of detention served on the petitioner on June 28, 1999 indicate that the detaining authority took into consideration two offences registered with Bhaktinagar Police Station under the Police Commissionerate, Rajkot for offences punishable under the Bombay Prohibition Act. The detaining authority observed in the grounds of detention that resorting to less drastic remedy may not prove to be efficacious. It is observed that the petitioner, after being bailed out in the above-stated two offences has indulged in to his illegal and anti-social activities and is likely to pursue the same which may adversely affect the public order in the city of Rajkot, and therefore, he is required to be detained under the provisions of the PASA Act.

#. In this petition, the petitioner has raised many grounds. Ms. Patel has however, restricted her arguments only to the fact that the detaining authority has passed the order on the basis of extraneous and irrelevant material which finds no support from any cogent or contemporaneous materia. She submitted that the detaining authority has come to conclusion that the detention under PASA Act is required because the detenue after being released on bail in the offences registered against him has, in past, indulged in illegal and anti-social activities, and therefore, he is likely to continue his activities in future. Ms. Patel submitted that there is no material to indicate any involvement of the petitioner in any illegal or anti-social activities after his release on bail in the offences registered against him. The authority has therefore, taken into consideration the material which finds no support from any contemporaneous record. The order therefore reflects non-application of mind and the detention order therefore, may be quashed and set aside.

#. Mr. Dave, learned AGP has opposed this petition vehemently.

#. Having regard to the submissions made by rival sides, it is apparent that the e detaining authority was impressed by the fact that after being released on bail in the offences registered against the petitioner, the petitioner has, in past, indulged into illegal and anti-social activities, and therefore, if he is not detained, he may pursue such activities which may prove to be detrimental to the public order. The factum of the

petitioner indulging in illegal and anti-social activities after his release on bail gets no support from any material. The detaining authority has not filed any affidavit to substantiate the observations made in the ground of detention. It is therefore, clear that the detention is based on an extraneous and irrelevant material, which would reflect non - application of mind and would vitiate the order of detention. The petition therefore deserves to be allowed on this ground alone.

#. The petition is allowed. The order of detention passed by the Commissioner of Police, Rajkot City, Rajkot, dated June 28.6.1999, in respect of Shailesh Hirabhai Gajera is hereby quashed and set aside. The petitioner-detenu be set at liberty forthwith, if not required in any other offence. Rule made absolute with no order as to costs.

[A.L.DAVE, J.]

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